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NV Energy, Inc. *and* Arthur Goodspeed. Case 28–CA–22476

January 29, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On November 5, 2009, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Charging Party filed exceptions and the Respondent filed an answering brief.

The National Labor Relations Board¹ has considered the decision and the record in light of the exceptions² and briefs and has decided to affirm the judge's rulings, findings,³ and conclusions and to adopt the recommended Order.

The judge dismissed the complaint, but in doing so did not address allegations that the Respondent violated Section 8(a)(1) of the Act by denying Charging Party Arthur Goodspeed's requests for union representation in meetings with the Respondent on March 20 and April 9, 2009.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation. Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See Teamsters Local 523 v. NLRB, _ , 2009 WL 4912300 (10th Cir. Dec. 22, 2009); Narricot Industries, L.P. v. NLRB, 587 F.3d 654 (4th Cir. 2009); Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

Based on the judge's factual findings, we find that the Respondent did not unlawfully deny Goodspeed's requests.

Under *NLRB v. J. Weingarten*, 420 U.S. 251 (1971), an employer violates Section 8(a)(1) when it denies an employee's request to have a union representative present at an investigatory interview that the employee reasonably believes might result in disciplinary action. The test for determining whether an employee reasonably believes that the interview might result in disciplinary action is measured by an objective standard under all the circumstances of the case, rather than by the employee's subjective belief. Id. at 257 fn. 5. See, e.g., *Southwestern Bell Telephone Co.*, 338 NLRB 552 (2002) (finding standard not met).⁴

Here, the meetings were held to follow up on complaints that Goodspeed and other employees had made about two training class instructors. In denying Goodspeed's request for union representation at each meeting, the Respondent's Human Resources Partner Michael Lenear-Liston told Goodspeed that the meetings were intended only to follow up on concerns that Goodspeed had raised about the instructors. The judge found no facts that would lead Goodspeed to doubt Lenear-Liston's assurances or to reasonably believe that the meetings could have resulted in his discipline. We accordingly dismiss the *Weingarten*-related allegations.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. January 29, 2010

Wili	na B. Liebman,	Chairman
Pete	r C. Schaumber,	Member
(SEAL)	NATIONAL LABOR F	RELATIONS BOARD

² The Charging Party, acting pro se, submitted his exceptions in a letter titled "Appeal or Exceptions." The Respondent contends that the exceptions fail to adhere to Sec. 102.46(b), (c), and (d) of the Board's Rules and Regulations. We find that the Charging Party's exceptions are in substantial compliance with the Board's Rules, and thus we have considered them. See *Diversified Enterprises*, 353 NLRB No. 120, slip op. at 1 fn. 2 (2009).

³ The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

⁴ Chairman Liebman dissented in *Southwestern Bell*, supra, but agreed that the applicable standard is an objective one.

⁵ There was no evidence that any of the other employees who complained to management about the instructors faced discipline or retaliation for complaining about the instructors. Each of the instructors received a "coaching" because of the complaints.

Joel C. Schochet, for the General Counsel.David C. Lonergan (Hunton & Williams), of Dallas, Texas, for the Respondent.

DECISION

MARY MILLER CRACRAFT, Administrative Law Judge. This case was tried in Las Vegas, Nevada, on August 25, 2009, ¹ pursuant to complaint and notice of hearing² alleging that Respondent NV Power, Inc. violated Section 8(a)(1) of the National Labor Relations Act (the Act)³ by twice denying Charging Party Arthur Goodspeed's request for union representation during investigatory interviews and subsequently discharging Goodspeed for his protected, concerted activity. On the entire record, including my observation of the demeanor of the witnesses, ⁴ and after considering the briefs filed by counsel for the General Counsel and counsel for the Respondent, I make the following findings of fact and conclusions of law.

JURISDICTION

Respondent, a Nevada corporation with an office and place of business in Las Vegas, Nevada, is a public utility engaged in the business of generating, distributing, and selling electricity to customers in Nevada and California. During the 12-month period ending April 20, Respondent derived gross revenues in excess of \$250,000 and sold electricity valued in excess of \$50,000 to customers located outside the State of Nevada. Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.⁵

LABOR ORGANIZATION STATUS

The International Brotherhood of Electrical Workers, Local Union 396, AFL–CIO, represents customer service representatives and various other employees at Respondent's facility pursuant to the terms of the parties 2008–2011⁶ collective-bargaining agreement. Respondent admits and I find that the Union is a labor organization within the meaning of the Act.

Facts

1. First training course

Goodspeed began employment as a bilingual customer service representative with Respondent in late February. He immediately commenced a 7- to 8-week training program with trainer Madeline Anzinger. After about 2 weeks of training, Goodspeed was absent due to a family medical emergency which occurred on Sunday, March 1. At 7 a.m. on Monday, March 2, Goodspeed left messages for trainer Anzinger and Rustye Barzoni-Covington, senior human resources representa-

tive, stating that he would not be at work that day due to the emergency. He did not actually speak to any representative of Respondent on Monday, March 2.

On Tuesday, March 3, Goodspeed called and spoke with Anzinger. He told her that he would not be in that day either. According to Goodspeed, Anzinger responded, "I don't think you have employment with NV Energy anymore." Goodspeed explained that he really needed the job and asked if there was anything he could do to prove the medical emergency. Anzinger told him to bring in the medical records and she would review them and "I'll let you know."

On Wednesday, March 4, Goodspeed reported to work and gave Anzinger various documents relating to the medical emergency. Anzinger examined the documents, advised Goodspeed to have a seat at his computer, and she would talk to her boss. She also told him to take the medical documents to human resources at some point. Goodspeed took the documents to human resources about 10 days later. He gave the documents to Barzoni-Covington. In the meantime, Goodspeed remained in Anzinger's class until Friday, March 13.

2. Second training course

Goodspeed was transferred to trainer Susan Penrod's class beginning Monday, March 16. There were five students in this class, plus Goodspeed. The class had commenced about 2 weeks prior to Goodspeed's transfer into the class.

On Wednesday, March 18, Goodspeed was told to report to the office of Evelyn Hollins, manager of training and performance. Both Union Steward Cynthia Wesson and Goodspeed agree that she was already present in the office with Hollins when Goodspeed arrived. Wesson testified that Respondent "always" calls a steward for "any discipline." Jesse Newman, senior business manager of the Union, testified that before he became a union business manager, he worked for Respondent and for 7 years (roughly 1999 through 2004), he was a union steward. He testified that Respondent's policy regarding steward participation in disciplinary meetings was to call the steward ahead of time, explain that there is an issue and request the steward's presence. Wesson testified there was no difference in application of this policy between probationary and permanent employees. HR Partner Lenear-Liston agreed. "We provide a Union steward when we are giving discipline or we are doing an investigation that may lead into discipline." The policy is not different for probationary employees than for permanent employees.

In any event, Hollins stated, "This is a meeting to let you know that you exceeded the time allowed for taking off." She informed Goodspeed that he would be suspended for 1 day. Goodspeed responded that he was unaware of the policy regarding allowed time off and he also told Hollins that he thought the matter was "taken care of" by virtue of the fact that he showed Anzinger the medical documentation supporting his absence. Goodspeed recited the steps he had taken to call in on Monday, March 2, and speaking with trainer Anzinger on Tuesday, March 3, about supplying medical documentation, and his meeting with her on Wednesday, March 4, to examine the documents. Nevertheless, Goodspeed was suspended for the day of Thursday, March 19. During the course of this meet-

¹ All dates are in 2009, unless otherwise referenced.

² The complaint and notice of hearing issued on June 30, pursuant to an unfair labor practice filed by Goodspeed on April 20, 2009.

³ 29 U.S.C. §158(a)(1).

⁴ Credibility resolutions have been made based upon a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

⁵ 29 U.S.C. §152(2), (6), and (7).

⁶ The contract is effective February 1, 2008, to February 1, 2011.

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ing, Goodspeed complained to Hollins of Anzinger's treatment of him. The above account given by Goodspeed is substantially corroborated by the testimony of Wesson and Hollins. Wesson added that Goodspeed was very upset and threatened a lawsuit for violation of HIPAA due to his having to bring in medical documentation. Additionally, Wesson recalled that at her request, Hollins gave Goodspeed her card and told him she had an open door policy. According to Lenear-Liston, he found out that the medical documentation had been placed in Goodspeed's personnel file. He retrieved the documents and returned them to Goodspeed.

On Friday, March 20, Goodspeed was called into a meeting with human resources partner, Michael Lenear-Liston. After sitting down in Lenear-Liston's office, Goodspeed requested a union representative. Lenear-Liston said no, "I'm just going to be asking you questions of what the allegations you brought up against Anzinger." Lenear-Liston also told Goodspeed that he wanted to get some information regarding what was happening in the class relating to the allegations Goodspeed had made about Anzinger. Goodspeed testified, "That's the only things we discussed is just her and what had happened with my medical records, that she said that I had been, I was already terminated."

Goodspeed continued in Penrod's training class during the weeks of March 23 and 30. Goodspeed observed that although Penrod treated him "fine," she treated other employees "very badly, pretty much like they were stupid" particularly fellow trainees Rosa [last name unknown] and Doris Barela. Coincidentally, during the week of April 6, according to Goodspeed, Gloria Virden, during the course of a 20-minute presentation, admonished Penrod's training class that it was not a good idea to go to human resources. "If you want to get ahead in this company you have to stay quiet." She added that if employees were called to human resources, they should say that you don't know anything.

3. Events of Friday, April 9

As trainees, all the students of Penrod's class were required to take and pass the customer service representative certification test. During a one-on-one conversation, Goodspeed discussed the test with Penrod on Wednesday, April 8, and suggested that the students be given an outline of the course to utilize for studying for the test.

At 7:30 a.m. on Thursday, April 9, Gloria began the training class by reviewing certification test materials and telling the trainees to ask any questions they had about the materials. The test was scheduled for about 2 weeks later. Rosa responded to Gloria's directive by stating that she did not understand why the trainees were going to work on the floor for 1 week before taking the certification test. Doris stated the same concern. All the students including Goodspeed asked Gloria for an outline or syllabus in order to study for the certification test. Goodspeed testified that he asked Gloria if there was any way she could give them an outline or tell them how she would study for the

test. Gloria responded that she thought Goodspeed was asking for the answers to the certification test.

When Penrod entered the room around 9 a.m., the students were still rather heatedly discussing with Gloria how they should study for the exam and they were also working on their computers, practicing taking orders. Penrod asked what was going on and Gloria responded that the students wanted to find out about the test—they wanted an outline to study. Penrod recalled speaking to Goodspeed about his outline idea and said it was a good idea. However, Penrod then said, "You know what guys? I ought to just give you the test right now and get this out of the way because I'm getting tired of it. You guys just get me frustrated, why don't you guys just go to break right now."

Goodspeed spoke to the five other students (Doris, Elizabeth, Rosa, and two whose names he could not recall). He told them he had had enough. Rosa responded, "I know, I've never worked for a company that—I mean the way they behave, they're so unprofessional." Elizabeth added, "That's what I told you about these guys, that's the way they are. You should have seen when I told them that I was going to resign. Boy, Evelyn, she just jumped all over me and says, 'You lied on your application." Doris added that Penrod treated her like a child. Goodspeed suggested that the group go to human resources "right now." Elizabeth and Doris said they would accompany him. One of the other trainees declined to join them citing Gloria's advice to not complain.

According to Union Steward Cynthia Wesson, she encountered the three employees as they walked toward human resources. Goodspeed told her the group had an issue with Penrod. Wesson suggested that the group meet with Hollins who was in charge of training, rather than going to human resources. Goodspeed declined and said they were going to human resources. Wesson explained to the group that she could accompany them to see Hollins but that she did not go to human resources unannounced.

The group encountered Barzoni-Covington upon entering human resources. She escorted the three employees to Lenear-Liston's office. Elizabeth told Lenear-Liston that Penrod was treating Doris "real bad." Elizabeth added that she was resigning from the training but would cooperate in any investigation. There was no mention of Anzinger during the 5- to 10-minute meeting. The three employees returned to their training class immediately. HR Partner Lenear-Liston recalled that the meeting probably was about 15 minutes and the employees complained about how they were spoken to by their trainer and the fact that they had been "thrown out" of the training department during their training. His notes reflect that he wrote down that the employees told him that Gloria advised against going to human resources with any problems. Lenear-Liston asked the three employees to go back to training and he would look into the matter.

Lenear-Liston then met with Hollins, manager of training, and told her about the employees' concerns. Hollins scheduled the employees to come to her office so that she could investigate their concerns.

Elizabeth submitted her resignation and left the training class shortly thereafter. Around 11 or 11:30 a.m., Penrod told

⁷ There is no specific testimony regarding the substance of these complaints regarding Anzinger in the Hollins/Goodspeed meeting.

⁸ Virden is a bargaining unit employee who served as a mentor during this training class.

Goodspeed that he was to meet with Eveyln Hollins at 11:45 a.m. She told Doris that when Goodspeed returned, Doris should leave the class and go meet with Hollins.

When Goodspeed arrived at Hollins office, he testified that Wesson⁹ looked into the office and asked if Hollins needed a union steward in the meeting. Hollins replied no and the union steward left. Both Hollins and Wesson deny that Wesson came to the door and asked if she was needed. Based on their relative demeanors, I credit their testimony over that of Goodspeed. Moreover, Hollins and Lenear-Liston both testified that they were both present in the office when Goodspeed arrived. Goodspeed thought Lenear-Liston arrived after the union steward left.

In any event, according to Goodspeed, Lenear-Liston initiated the meeting stating, "We want to talk with you about the things that are going on. This is not a disciplinary thing . . . we just want to get you on the phones as soon as possible because . . . they really need you up there." By "get you on the phones," Lenear-Liston was referring to completion of training so that Goodspeed could begin working as a bilingual customer service representative. Next Lenear-Liston told Goodspeed that all complaints should come to Hollins and he told Goodspeed that he was a probationary employee and could be terminated at any time. Lenear-Liston agreed that he told Goodspeed he was a probationary employee during the course of the meeting. He denied that he said Goodspeed could be terminated at any time. Lenear-Liston could not recall why he mentioned Goodspeed's probationary status. He thought it was in connection with something that came up during the meeting but could not recall anything more specific. Based upon Respondent's disciplinary process which requires consensus up and down the management personnel involved, I credit Lenear-Liston's denial. It would have been impossible to discharge any employee on the spot and saying that an employee could be discharged at any time appears to be in contradiction to this practice.

At this point, Goodspeed requested a union representative. Lenear-Liston said, "No, this is not investigatory or anything like that. You don't need a union rep." Goodspeed persisted that he would like to have a union representative. According to Goodspeed, Lenear-Liston said, "Listen to me, Arthur, you're not going to get union representation here." Goodspeed estimated that during the course of the meeting, he asked for a union representative about six times and each time, Lenear-Liston denied the request. Goodspeed also testified that Lenear-Liston denied his request to consult with a union steward to verify that he was not entitled to representation. According to Goodspeed, Lenear-Liston's voice was loud and this caused Goodspeed to begin experiencing a panic attack. Although a full blown panic attack may cause confusion,

Goodspeed testified that he was not confused during this meeting because the symptoms were not full blown.

After Goodspeed explained that he needed this job in order to qualify for a home loan modification, Lenear-Liston told Goodspeed to give him his badge and follow him. When they arrived at the training room, Goodspeed was instructed to remain in the hall. Lenear-Liston entered the training room, retrieved Goodspeed's jacket and lunch bag, came back to the hall, handed the jacket to Goodspeed and the lunch bag fell on the floor. At this point, Goodspeed's panic attack became full blown. Lenear-Liston told Goodspeed to follow him. They proceeded to security and Goodspeed left the building.

Lenear-Liston agreed that he told Goodspeed that the meeting was for the purpose of investigating the concerns he brought up that morning. Lenear-Liston testified that Goodspeed interrupted and spoke over him about his treatment being unfair, about an Obama plan dealing with refinancing his house, and several different things. Lenear-Liston recalled that about mid-meeting Goodspeed twice requested a union steward and Lenear-Liston replied, "This is not a disciplinary meeting. We were just talking about the concerns you were trying to bring up." Goodspeed said, "You guys are stressing me out and I'm just going to have to resign." Lenear-Liston questioned, "Arthur, are you going to resign?" and he responded that he was. Lenear-Liston asked, "Are you sure?" and Goodspeed replied that he was sure. Lenear-Liston asked for his badge, walked him to training to get his personal possessions, and escorted him from the building. According to Lenear-Liston, during the time they were in transit, Goodspeed said he was not going to go quietly. "He wanted to talk to the president of the company, he was going to go to the NLRB, he was going to go to the union, [and] the PUCN [Public Utilities Commission]. . . ." An employee turnaround document dated April 13 states that the reason for turnaround is "termination/voluntary," "personal reasons."

Lenear-Liston recalled that when he handed Goodspeed his jacket and lunch bag, the lunch bag fell to the floor. Lenear-Liston apologized. He testified that he did not intentionally throw anything on the floor.

Hollins recalled that when Goodspeed came to her office. Lenear-Liston was already seated in the office. Lenear-Liston told Goodspeed that the purpose of the meeting was to investigate the earlier complaints of the three trainees. Goodspeed asked for a union steward and Lenear-Liston told him there was no discipline, he was merely performing his "due diligence" investigation of the employees' complaints. Goodspeed reiterated his request for a union steward and Lenear-Liston again denied the request stating that this was not disciplinary. Goodspeed then spoke about a stimulus bill that affected his house. He needed to be employed in order to receive stimulus package money for his house. Goodspeed asked to speak to the president of the union. Goodspeed was quite agitated. Lenear-Liston again stated the purpose of the meeting was to investigate claims made by Goodspeed about his training instructor. Goodspeed said, "I'm out of here." Lenear-Liston said. "Art. are you resigning." Goodspeed replied, "Yes." Lenear-Liston said, "Well, I'll take your badge and we'll go and get your things." Hollins described Lenear-Liston's demeanor as calm.

⁹ Goodspeed's testimony was that it was the same union steward as was present when he received the 1-day suspension. He agreed, when reminded of the name, that the union steward was Wesson.

¹⁰ In both his statement to the NLRB and to the Union, Goodspeed wrote that Lenear-Liston was in Hollins' office when he arrived for the meeting. He testified that he was confused when he made the written statements and realized later that Lenear-Liston came in after the union steward left.

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Following Goodspeed's meeting with Lenear-Liston, Doris Barela met with him. They went over the complaints Barela and the group had regarding Penrod's training. According to Barela, Lenear-Liston told Barela that he wanted her to know that Goodspeed had left of his own accord—he was not fired. Lenear-Liston agreed that he told Barela that Goodspeed had resigned of his own accord.

Lenear-Liston investigated a prior complaint about training. In March, employee Raenell Kruessen complained about the treatment her trainer, Madeline Anzinger, provided. Lenear-Liston interviewed the entire class. One of the employees interviewed was Goodspeed. After concluding the investigation, Hollins conducted a coaching for trainer Anzinger.

Lenear-Liston testified that as an HR partner, he had no authority to fire or discipline employees. His job, rather, is to look over the discipline that a supervisor recommends to ensure "we are doing things in compliance." Lenear-Liston testified that he did not discipline or fire Goodspeed on April 9, but he did ask him to leave the premises.

Later that day, Goodspeed visited the union and left an account of the events immediately above. Early the following morning, around 1 or 2 a.m., Goodspeed called the Respondent's ethics line and spoke with a man for about 2 hours. The man said someone would get back to Goodspeed. Vil Southasarn called back on the following Monday, April 13, and made an appointment for Goodspeed. The Union filed a grievance on behalf of Goodspeed regarding the events of April 9.11

On Friday, April 10, Goodspeed requested his termination papers from human resources. He did not receive these papers. Rather, he was told by a representative of human resources that he had resigned.

Jesse Newman, who served as a union steward at Respondent's facility from roughly 1999 through 2004, and then became a business agent for the union, testified that the decision to terminate an employee at Respondent's facility was not, in his experience, made on the spot. He had never experienced such a termination either when he was union steward or business manager. Newman described Respondent's disciplinary process as follows:

The person would be put on suspension pending investigation and the investigation would start. The company would do their fact-finding and at that time they would do a concurrence thing depending on which particular group it is. It could go all the way up to the Executive VP all the way back down, basically stating the fact, the reason to terminate and the decision behind that. And it would go all the way down through a chain of supervisors concurring or not concurring. If there was a concurrence, then everything would continue on. If there wasn't then they would reschedule a meeting and figure out why they weren't on the same page until they made a decision whether it was best to terminate or not terminate.

HR Partner Lenear-Liston characterized the disciplinary process as a review process going "through the supervisor to

the manager and to the HR manager an[d] on up to get approval." He explained that all managers have to be in concurrence to terminate an employee. Lenear-Liston was unaware of any employee being terminated "on the spot" during his eighteen months in human resources. Manager of training and performance, Evelyn Hollins, agreed. A termination of a training employee would go through her to higher levels before it could be approved.

Analysis

Based upon the record as a whole, I find that Goodspeed resigned his employment with Respondent. Having thoroughly reviewed the testimony of Goodspeed, Hollins, and Lenear-Liston, their relative demeanors, and the inherent probability of each of their testimony, I find the testimony of Hollins and Lenear-Liston genuine and credible. Their testimony provided context and a coherent scenario for the April 9 meeting with Goodspeed. Moreover, many of their assertions were corroborated by the disinterested testimony of the union steward and the senior business manager.

On the other hand, although I was impressed with Goodspeed's effort to recount the facts, I found his testimony about the April 9 meeting somewhat confusing, lacking in context, and improbable. Goodspeed provided confusing and often nonresponsive answers to questions he was asked. His assertion that he was discharged on April 9, is belied by the uniform testimony of Respondent's witnesses, including two union officials, that a corporate decision to discharge is multilevel. Not one instance of an immediately effected discharge is contained in the record. Moreover, the record is replete with evidence of Respondent's generally positive attitude toward Goodspeed's future with Respondent. Finally, it is undisputed that Goodspeed had previously complained to human resources about his instructor during his first training course. All witnesses agree that Goodspeed was questioned in human resources about that instructor and that no action was taken against him for making these complaints or for requesting a union steward during that session. In fact, his instructor was coached about the offending behavior.

Upon entering a second training course with a new instructor, Goodspeed and others complained about the new instructor. On the same day the group made these complaints, Goodspeed was asked to come to human resources to provide information about the complaints. Goodspeed's account of this session is difficult to believe given the corporate investment in providing training to Goodspeed including the coaching program for instructors, Respondent's expressed need for his help on the phones, and the fact that another employee was questioned on the same day in human resources regarding the same instructor and was not disciplined or discharged. Thus, I find that Goodspeed resigned his employment with Respondent on April

CONCLUSIONS OF LAW

1. Respondent NV Energy, Inc., Las Vegas, Nevada, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

¹¹ Following the filing of the grievance, the Union conducted an investigation of the allegations of the grievance. Resolution of the grievance is outside the scope of this proceeding.

2. Respondent did not violate the Act as alleged in the complaint and, accordingly, the complaint is dismissed.

Dated, Washington, D.C. November 5, 2009